SUPREME COURT OF THE UNITED STATES.

Nos. 80 and 81.—October Term, 1925

Frederick C. Hicks, Alien Property Custodian, and Frank White, Treasurer of the United States, Petitioners,	
80 *vs.*	
Benjamin Guinness, Walter T. Rosen, Moritz Rosenthal, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
Benjamin Guinness, Walter T. Rosen, Moritz Rosenthal, et al., Petitioners,	
81 *vs.*	
Frederick C. Hicks, Alien Property Custodian, Frank White, Treasurer of the United States, and Carl Joerger, et al.	

[November 16, 1925.]

Mr. Justice Holmes delivered the opinion of the Court.

These are cross petitions based upon a suit brought against the Alien Property Custodian by Guinness and others, doing business under the firm name of Ladenburg, Thalmann & Co. in New York. The facts are not in dispute. A German firm, Joerger and others doing business under the name of Delbrück, Schickler & Co., was indebted to the American firm under an account stated on December 31, 1916, for 1079.35 marks, subject to a setoff of $35.35. The debt was not paid when the war between Germany and the United States began, April 6, 1917. The Alien Property Custodian had taken property of the German firm of a value greater than the debt and the American firm brought this suit in equity to recover what was due to it, as provided by the Trading with the Enemy Act of October 6, 1917, c. 106, § 9; 40 Stat. 411, 419, amended by the Act of June 5, 1920, c. 241; 41 Stat. 977. The only questions raised and argued here are whether interest is to be allowed

for the time covered by the war, from April 6, 1917, to July 14, 1919, and at what date the value of the mark is to be estimated in dollars in order to fix the amount of the decree. The District Court held that interest was suspended during the war, 291 Fed. Rep. 768, and that the value of the mark at the time when the debt should have been paid was the proper measure. (This value is fixed as 17½ cents.) 291 Fed. Rep. 769. The decree was affirmed by the Circuit Court of Appeals. 299 Fed. Rep. 538. The Alien Property Custodian in the interest of the German debtors seeks to reverse the latter ruling, in No. 80, and the American firm seeks to reverse the former ruling, in No. 81.

We take up the second question first as the principles that govern it have some bearing upon the matter of interest also. We are of opinion that the Courts below were right in holding that the plaintiffs were entitled to recover the value in dollars that the mark had when the account was stated. The debt was due to an American creditor and was to be paid in the United States. When the contract was broken by a failure to pay, the American firm had a claim here, not for the debt, but, at its option, for damages in dollars. It no longer could be compelled to accept marks. It had a right to say to the debtors you are too late to perform what you have promised and we want the dollars to which we have a right by the law here in force. *Gould* v. *Banks*, 8 Wend. 562, 567. The event has come to pass upon which your liability becomes absolute as fixed by law. *Globe Refining Co.* v. *Landa Cotton Oil Co.*, 190 U. S. 540, 543. There is no doubt that this rule prevails in actions for a tort, *Preston* v. *Prather*, 137 U. S. 604, and in actions for the failure to deliver merchandise. *Hopkins* v. *Lee*, 6 Wheat. 109. The principle is the same in a contract for the payment of marks. The loss for which the plaintiff is entitled to be indemnified is 'the loss of what the contractor would have had if the contract had been performed', *Chicago, Milwaukee & St. Paul Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, 100; it happens at the moment when the contract is broken, just as it does when a tort is committed, and the plaintiff's claim is for the amount of that loss valued in money at that time. The inconveniences and speculations that would be the result of a different rule have been pointed out in arguments and decisions, and on the other hand the momentary interest of the country of the forum may be in favor of taking the date of the judgment, but the conclusion to which we come

seems to us to flow from fundamental theory and not to need other support. It is in accord with the decisions of several State Courts and Circuit Courts of Appeal as well as of the English House of Lords. *Hoppe* v. *Russo-Asiatic Bank*, 235 N. Y. 37. *Katcher* v. *American Express Co.*, 94 N. J. L. 165, 171. *Simonoff* v. *Granite City National Bank*, 279 Ill. 248, 255. *Wichita Mill & Electric Co.* v. *Naamlooze &c. Industrie*, 3 Fed. Rep. 2d 931. *S. S. Celia* v. *S. S. Volturno* [1921] 2 A. C. 544.

The denial of interest for the time covered by the war seems to us wrong. The cause of action had accrued before the war began, *Young* v. *Godbe*, 15 Wall. 562, and after it had accrued the question was no longer one of excuse for not performing a contract, but of the continuance of a liability for damages that had become fixed. The obligation of a contract is subject to implied exceptions, but when a liability is incurred by wrong or default it is absolute. Interest is due as one of its incidentals, and inability to pay it no more excuses from that than it does from the principal amount. Of course while the damages remain unpaid interest during one time is as necessary as interest during another to effect the indemnification to which the delinquent is held by the law. There are indications that local and momentary interests have led to a diversity of decisions but here again what we regard as principle has prevailed in later days, *Miller* v. *Robertson*, 266 U. S. 243; *Hugh Stevenson & Sons, Ltd.* v. *Aktiengesellschaft für Cartonnagen-Industrie*, [1918] A. C. 239, 245; s. c. [1917] 1 K. B. 842, 850. The case of *Brown* v. *Hiatts*, 15 Wall. 177, although criticized in the last cited decision, is consistent on its facts with the principle adopted here, since war existed at the time when the cause of action otherwise would have accrued, and it very possibly might be held that war excuses the performance of a contract although it does not impair or diminish a liability already fixed by law. Our decision makes it unnecessary to consider arguments drawn from the Treaty with Germany and the Trading with the Enemy Act.

No. 80, decree affirmed.
No. 81, decree reversed as to interest.

Mr. Justice STONE took no part in this case.